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5 Attorneys for Defendants

WARNER BROS. ENTERTAINMENT INC.

6 and ENESCO, LLC

7
8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10 ZACK WARD,

11 Plaintiff,

12 v.

13 WARNER BROS. ENTERTAINMENT
14 INC. and ENESCO, LLC,

15 Defendants.

Case No. CV 11-06749-PLA

**ANSWER OF DEFENDANTS
WARNER BROS.
ENTERTAINMENT INC. AND
ENESCO, LLC**

Complaint Served: August 17, 2011

1 Defendants Warner Bros. Entertainment Inc. and Enesco, LLC
2 (“Warner/Enesco”) hereby answer the Complaint of plaintiff Zack Ward
3 (“Plaintiff”) as follows:

4 **PRELIMINARY STATEMENT**

5 1. Defendants lack knowledge or information sufficient to form a belief as
6 to the truth of the allegations contained in Paragraph 1 of the Complaint, and on that
7 basis deny each and every allegation contained therein.

8 **JURISDICTION AND VENUE**

9 2. Defendants deny that this Court has jurisdiction over this action
10 pursuant to 28 U.S.C. §§1332 and 1338(a) and (b). Defendants admit that this Court
11 has jurisdiction over a Lanham Act claim under Section 43(a), but otherwise
12 Defendants deny, generally and specifically, each and every remaining allegation
13 contained in Paragraph 2 of the Complaint.

14 3. Defendants lack knowledge or information sufficient to form a belief as
15 to the truth of the allegations contained in Paragraph 3 of the Complaint, and on that
16 basis deny each and every allegation contained therein

17 4. Defendants lack knowledge or information sufficient to form a belief as
18 to the truth of the allegations contained in Paragraph 4 of the Complaint, and on that
19 basis deny each and every allegation contained therein.

20 **PARTIES**

21 5. Defendants lack knowledge or information sufficient to form a belief as
22 to the truth of the allegations contained in Paragraph 5 of the Complaint, and on that
23 basis deny each and every allegation contained therein.

24 6. Warner admits that Warner Bros. Entertainment Inc. is a Delaware
25 corporation with its principal place of business located at 4000 Warner Blvd.,
26 Burbank, California 91522. Except as expressly admitted herein, Warner denies,
27 generally and specifically, each and every remaining allegation contained in
28 Paragraph 6 of the Complaint. Enesco lacks knowledge or information sufficient to

1 form a belief as to the truth of the allegations contained in Paragraph 6 of the
2 Complaint, and on that basis denies each and every allegation contained therein.

3 7. Enesco admits that Enesco LLC is a limited liability company with its
4 principal place of business at 225 Windsor Dr., Itasca, Illinois 60143. Except as
5 expressly admitted herein, Enesco denies, generally and specifically, each and every
6 remaining allegation contained in Paragraph 7 of the Complaint. Warner lacks
7 knowledge or information sufficient to form a belief as to the truth of the allegations
8 contained in Paragraph 7 of the Complaint, and on that basis denies each and every
9 allegation contained therein.

10 **FACTUAL ALLEGATIONS**

11 8. Defendants lack knowledge or information sufficient to form a belief as
12 to the truth of the allegations in Paragraph 8 of the Complaint, and on that basis
13 deny each and every allegation contained therein.

14 9. Warner admits that Plaintiff entered into an agreement with Christmas
15 Tree Films, Inc. on or about January 10, 1983, pursuant to which plaintiff agreed to
16 play the character Scut Farkas in a motion picture entitled "A Christmas Story."
17 Except as expressly admitted herein, Warner denies, generally and specifically, each
18 and every remaining allegation contained in Paragraph 9 of the Complaint. Enesco
19 lacks knowledge or information sufficient to form a belief as to the truth of the
20 allegations contained in Paragraph 9 of the Complaint, and on that basis denies each
21 and every allegation contained therein.

22 10. To the extent that the allegations in Paragraph 10 of the Complaint
23 refer to a written document, the content of said document speaks for itself. Except
24 as expressly admitted herein, Warner denies, generally and specifically, each and
25 every remaining allegation contained in Paragraph 10 of the Complaint. Enesco
26 lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations contained in Paragraph 10 of the Complaint, and on that basis denies
28 each and every allegation contained therein.

1 11. To the extent that the allegations in Paragraph 11 of the Complaint
2 refer to a written document, the content of said document speaks for itself. Except
3 as expressly admitted herein, Warner denies, generally and specifically, each and
4 ever remaining allegation contained in Paragraph 11 of the Complaint. Enesco lacks
5 knowledge or information sufficient to form a belief as to the truth of the allegations
6 contained in Paragraph 11 of the Complaint, and on that basis denies each and every
7 allegation contained therein.

8 12. Defendants deny, generally and specifically, each and every allegation
9 contained in Paragraph 12 of the Complaint. Enesco lacks knowledge or
10 information sufficient to form a belief as to the truth of the allegations contained in
11 Paragraph 12 of the Complaint.

12 13. Defendants admit the Movie currently attracts a large number of
13 viewers when broadcast on television, but Defendants otherwise lack knowledge or
14 information sufficient to form a belief as to the truth of the allegations contained in
15 Paragraph 13 of the Complaint, and on that basis deny each and every allegation
16 contained therein.

17 14. To the extent that the allegations in Paragraph 14 of the Complaint
18 refer to a written document, the content of said document speaks for itself. Except
19 as expressly admitted herein, Defendants deny, generally and specifically, each and
20 ever remaining allegation contained in Paragraph 14 of the Complaint.

21 15. Defendants deny, generally and specifically, each and every allegation
22 contained in Paragraph 15 of the Complaint. Enesco lacks knowledge or
23 information sufficient to form a belief as to the truth of the allegations contained in
24 Paragraph 15 of the Complaint.

25 16. Defendants deny, generally and specifically, each and every allegation
26 contained in Paragraph 16 of the Complaint. Warner lacks knowledge or
27 information sufficient to form a belief as to the truth of the allegations contained in
28 Paragraph 15 of the Complaint.

1 17. Defendants deny, generally and specifically, each and every allegation
2 contained in Paragraph 17 of the Complaint.

3 18. Defendants deny, generally and specifically, each and every allegation
4 contained in Paragraph 16 of the Complaint.

5 19. Defendants deny, generally and specifically, each and every allegation
6 contained in Paragraph 16 of the Complaint.

7 20. Defendants lack knowledge or information sufficient to form a belief as
8 to the truth of the allegations in Paragraph 20 of the Complaint, and on that basis
9 deny each and every allegation contained therein.

10 21. Defendants lack knowledge or information sufficient to form a belief as
11 to the truth of the allegations in Paragraph 21 of the Complaint, and on that basis
12 deny each and every allegation contained therein.

13 22. To the extent that the allegations in Paragraph 22 of the Complaint
14 refer to written communications between Plaintiff and Defendants, Defendants
15 admit that Plaintiff sent Enesco a letter on or about November 30, 2010, the content
16 of which speaks for itself. Except as expressly admitted herein, Defendants deny,
17 generally and specifically, each and ever remaining allegation contained in
18 Paragraph 22 of the Complaint.

19 23. To the extent that the allegations in Paragraph 23 of the Complaint
20 refer to written communications between Plaintiff and Defendants, Defendants
21 admit that Warner Bros. sent Plaintiff's counsel a letter on or about December 13,
22 2010, the content of which speaks for itself. Except as expressly admitted herein,
23 Defendants deny, generally and specifically, each and ever remaining allegation
24 contained in Paragraph 23 of the Complaint.

25 24. Defendants admit that Warner Bros. sent Plaintiff's counsel a letter on
26 or about December 13, 2010, the content of which speaks for itself. Except as
27 expressly admitted herein, Defendants deny, generally and specifically, each and
28 ever remaining allegation contained in Paragraph 24 of the Complaint.

1 25. Defendants deny, generally and specifically, each and every allegation
2 contained in Paragraph 25 of the Complaint.

3 26. Defendants deny, generally and specifically, each and every allegation
4 contained in Paragraph 26 of the Complaint.

5 **COUNT I**

6 27. To the extent that Plaintiff incorporates by reference each and every
7 allegation of Paragraphs 1-26 as though fully set forth herein, Defendants
8 incorporate by reference each and every response to Paragraphs 1-26 as though fully
9 set forth herein.

10 28. Plaintiff is quoting a statute, to which no response by Defendants is
11 required. To the extent that any response is required, Defendants deny, generally
12 and specifically, each and every allegation contained in Paragraph 28 of the
13 Complaint.

14 29. Defendants deny, generally and specifically, each and every allegation
15 contained in Paragraph 29 of the Complaint.

16 30. Defendants deny, generally and specifically, each and every allegation
17 contained in Paragraph 30 of the Complaint.

18 31. Defendants deny, generally and specifically, each and every allegation
19 contained in Paragraph 31 of the Complaint.

20 32. Defendants deny, generally and specifically, each and every allegation
21 contained in Paragraph 32 of the Complaint.

22
23 **COUNT II**

24 33. To the extent that Plaintiff incorporates by reference each and every
25 allegation of Paragraphs 1-32 as though fully set forth herein, Defendants
26 incorporate by reference each and every response to Paragraphs 1-32 as though fully
27 set forth herein.

1 34. Plaintiff is quoting a statute, to which no response by Defendants is
2 required. To the extent that any response is required, Defendants deny, generally
3 and specifically, each and every allegation contained in Paragraph 34 of the
4 Complaint.

5 35. Defendants deny, generally and specifically, each and every allegation
6 contained in Paragraph 35 of the Complaint.

7 36. Defendants deny, generally and specifically, each and every allegation
8 contained in Paragraph 36 of the Complaint.

9 **COUNT III**

10 37. To the extent that Plaintiff incorporates by reference each and every
11 allegation of Paragraphs 1-36 as though fully set forth herein, Defendants
12 incorporate by reference each and every response to Paragraphs 1-36 as though fully
13 set forth herein.

14 38. Defendants deny, generally and specifically, each and every allegation
15 contained in Paragraph 38 of the Complaint.

16 39. Defendants deny, generally and specifically, each and every allegation
17 contained in Paragraph 39 of the Complaint.

18 40. Defendants deny, generally and specifically, each and every allegation
19 contained in Paragraph 40 of the Complaint.

20 **DEFENSES**

21 **FIRST AFFIRMATIVE DEFENSE**

22 **(Failure to State a Claim)**

23 1. The Complaint, and each purported claim for relief therein, fails to state
24 facts sufficient to constitute a claim for relief against Defendants, or each of them.

25 **SECOND AFFIRMATIVE DEFENSE**

26 **(Statute of Limitations)**

27 2. Plaintiff's claims are barred by the statutes of limitation set forth in
28 C.C.P. §§338 and 339.

THIRD AFFIRMATIVE DEFENSE

(Estoppel)

3. The Complaint, and each purported claim for relief therein, is barred by the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

(Laches)

4. The Complaint, and each purported claim for relief therein, is barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

5. The Complaint, and each purported claim for relief therein, is barred by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

(Additional Defenses)

6. Due to the lack of information as to matters set forth in the Complaint, Defendants have insufficient knowledge or information on which to form a belief as to whether they have additional, as yet unstated, defenses available, and Defendants therefore reserve the right to assert additional defenses in the event that discovery indicates they are proper.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff take nothing and be afforded no relief;
2. That Plaintiff's claims be dismissed with prejudice in their entirety and judgment be entered in favor of Defendants;
3. That Defendants be awarded their costs and expenses incurred in this action, including their reasonable attorneys' fees incurred in this action; and

1 4. For all other relief as the Court may deem just and proper.
2

3 DATED: October 4, 2011

Respectfully submitted,

4 WARNER BROS. ENTERTAINMENT INC.

5 Katherine Chilton

6 Wayne M. Smith

7
8 By



9 KATHERINE CHILTON

10 Attorney for Defendants

11 WARNER BROS. ENTERTAINMENT INC.

12 and ENESCO, LLC
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who has consented to electronic service are being served with a copy of the foregoing document via the Central District of California CM/ECF system on October 4, 2010.


Katherine Chilton